

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA L. ASHBY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C18-1655-JCC

ORDER

This matter comes before the Court on Petitioner Jessica Ashby's motion to vacate, set aside, or correct her sentence, under 28 U.S.C. § 2255, (Dkt. No. 1) and motion to appoint counsel (Dkt. No. 4). Petitioner pled guilty to conspiracy to distribute heroin. *See United States v. Cota-Muniz*, Case No. CR17-0111-JCC, Dkt. Nos. 63, 75 (W.D. Wash. 2017). On December 11, 2017, Petitioner was sentenced to 54 months of imprisonment. *Id.* at Dkt. No. 92.

Before directing service and answer to a habeas corpus petition, the Court must determine whether the motion, the files, and the records of the case "conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). In her plea agreement, Petitioner waived "any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation." *United States v. Cota-Muniz*, Case No. CR17-0111-JCC, Dkt. No. 63 at 9 (W.D. Wash. 2017). The Ninth Circuit has upheld the enforceability of a knowing and voluntary waiver of the right to bring a collateral

1 attack for pre-plea constitutional violations. *United States v. Abarca*, 985 F.2d 1012, 1014 (9th
2 Cir. 1993). However, such a waiver does not preclude a § 2255 claim for ineffective assistance
3 of counsel or involuntariness of waiver. *Id.* Petitioner asserts three grounds for relief in her
4 motion—(1) involuntariness of her plea agreement, (2) unlawful arrest, and (3) ineffective
5 assistance of counsel. (*See* Dkt. No. 1.)

6 Because it concerns a pre-plea constitutional violation, Petitioner’s unlawful arrest
7 allegation is barred by her plea agreement. *See Tollett v. Henderson*, 411 U.S. 258, 266 (1973)
8 (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the
9 offense with which he is charged, he may not thereafter raise independent claims relating to the
10 deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”).
11 Petitioner’s unlawful arrest ground is DISMISSED with prejudice. With regard to the other
12 grounds for relief, the record does not conclusively show that Petitioner is entitled to no relief.
13 Therefore, service on these grounds is proper.

14 The Court GRANTS Petitioner’s motion for appointment of counsel (Dkt. No. 4). There
15 is no general right to have counsel appointed in cases brought under 28 U.S.C. § 2255 unless an
16 evidentiary hearing is required. *See Terrovona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988).
17 The Court may exercise its discretion to appoint counsel for a financially eligible individual
18 where the “interests of justice so require.” 18 U.S.C. § 3006A. Because Petitioner’s claim
19 involves facts that may require an evidentiary hearing, the Court finds the appointment of
20 counsel appropriate.

21 Accordingly, the Court ORDERS as follows:

- 22 1. The Clerk shall direct a copy of this order to Petitioner.
- 23 2. If not previously accomplished, electronic posting of this order and petition shall
24 effect service upon the United States Attorney of copies of the § 2255 motion and of
25 all documents in support thereof.

